

**Exhibit B**  
**Transcript of Walker County Civil Service Board**  
**Hearing dated 7/12/04**  
**(Part II)**

1 with him. He's hurt his hand." So I said, "Well, stand  
2 up, Tommy, and I'll put the handcuffs in front of you."  
3 So I got him up and put the handcuffs in front of him,  
4 and I asked Ms. Pat to -- if she would go get him some  
5 clothes, go get him some pants. So she goes to the  
6 bedroom and she's gone for a little bit, and I asked  
7 her, I said -- I heard a phone -- I heard the phone  
8 dialing, and I asked her, I said, "Will you bring his  
9 pants on where we could go?" So she come back in there  
10 and she said -- she was talking to his brother Gene, and  
11 she said, "Well, Gene, you know how he is. I know he  
12 ought not to fight with them, but you can't tell him  
13 nothing." I helped her put his pants on, and then I  
14 asked her would she go get him some shoes, and she went  
15 back and got him some shoes.

16 Q. Did you tell her to hang up the phone? Did  
17 you tell her to put down the phone?

18 A. I don't remember that part. I may have told  
19 her that she needed to come help me put his clothes on.  
20 I may have told her that, but she grabbed one side and I  
21 grabbed the other side and we helped him put his pants  
22 on. He was sitting in his recliner.

23 Q. Was it after he had his pants on you put the  
24 handcuffs on him?

25 A. No, sir.

1 Q. Before?

2 A. Yes, sir.

3 Q. And then I told him we would go, and he  
4 stood up and he started walking to the door and then he  
5 wouldn't go out the door. I said, "Tommy, come on,  
6 let's go now." I had him by his left arm and I was  
7 trying to get him out the door. When he started down  
8 his steps, he sat on his door steps. And I told him, I  
9 said, "Tommy, get up now. Come on, let's go." And I  
10 had him by his arm all the way to the car to get him to  
11 the car because he didn't want to walk to the car.

12 Q. All right. Now, you got him charged -- I  
13 understand he's been charged with two violations; one is  
14 public intoxication?

15 A. Yes, sir -- no, sir.

16 Q. Disorderly conduct and resisting arrest?

17 A. Yes, sir.

18 Q. And it's your statement and testimony that  
19 both of these occurred within the confines of his home?

20 A. Yes, sir.

21 Q. And it's also your testimony that his wife  
22 never told you to leave?

23 A. No, sir. I don't recall that, no, sir. She  
24 was actually pleasant. She tried -- she told Tommy, she  
25 said, "Tommy, don't fight with him." But I don't ever

1 recall her being ugly at all.

2 Q. So how far is his residence from -- did you  
3 take him to Jasper or did you take him to --

4 A. Walker County.

5 Q. You took him to Walker County jail?

6 A. Yes, sir.

7 Q. Here in town?

8 A. Yes, sir.

9 Q. And how far is his residence from here?

10 A. From here to his driveway is 16.1 miles.

11 Q. 16.1 miles?

12 A. Yes, sir.

13 Q. That's pretty accurate. How would you know  
14 that it's 16.1 miles as opposed to 16.5 or 15.9 miles?

15 A. I took the mileage down.

16 Q. Okay. Are you required to do that?

17 A. I took the mileage today.

18 Q. You took it today?

19 A. Yes, sir.

20 Q. Why did you take it today?

21 A. At the request of the attorney.

22 Q. Now, once you left his property, his  
23 premises -- let me ask you this: What route did you  
24 take?

25 A. When I left Tommy's house?

1 Q. Yes, sir.

2 A. We come back out of his house on to  
3 Leonard's Chapel Road.

4 Q. What road?

5 A. The road he lives on is Leonard's Chapel  
6 Road.

7 Q. Leonard's Chapel?

8 A. Yes, sir.

9 Q. We came to Prospect Road and then went to  
10 Cheatham Road. Traveled Cheatham Road to Ripley Road.

11 Q. Ripley?

12 A. Ripley, R-i-p-l-e-y. And to Highway 118,  
13 took the Corridor, and then here.

14 Q. Highway 118?

15 A. Yes, sir. That's the old 78 there until you  
16 get on the Corridor, and it turns back to 78.

17 Q. All right. Now, was this the same route  
18 that you had traveled while in route to Mr. Burch's  
19 residence?

20 A. I don't recall that. I wouldn't know that.

21 Q. Where were you when you first got the  
22 dispatch?

23 A. I don't have a dispatch sheet where I would  
24 -- I don't know. I usually either work -- if there's  
25 two of us, I'll work west and south or west and north.

1 And then mainly most of the time I work west side of the  
2 county, and that would have been on the west side of the  
3 county.

4 Q. But you weren't here in Jasper?

5 A. I don't recall.

6 Q. You don't recall?

7 A. No, sir.

8 Q. Now, is this route that you just described  
9 for us, is that route a typical route that you would  
10 take from his residence? It doesn't appear to be a  
11 straight shot.

12 A. It would be the closest route.

13 Q. This would be the closest?

14 A. That I would think of, yes, sir.

15 Q. And most expeditious route?

16 A. I would think so.

17 Q. What time did you leave the residence? Did  
18 you make a call in?

19 A. Yes. I went -- 15-C, 10-84 to the county  
20 jail at 2:06.

21 Q. You arrived at 2:06?

22 A. No, sir. I went in route to the county  
23 jail --

24 Q. At 2:06?

25 A. Either I was pulling out of his driveway or

1 I had left his house at that -- by that time, when I  
2 called it in.

3 Q. And who did you call?

4 A. The dispatch.

5 Q. And did you call while you were still inside  
6 their home?

7 A. No, sir.

8 Q. Did you have any communications with the  
9 dispatcher while you were inside their home?

10 A. Do I have communication?

11 Q. Did you have any communication with the  
12 dispatcher?

13 A. I don't know. Usually they do a check on us  
14 after so many minutes when we're out on a call, but I  
15 don't know. It's not on here, so I wouldn't know. I  
16 don't remember that.

17 Q. So at the time that you were making this  
18 arrest, would you not have called to let that fact be  
19 known?

20 A. Usually --

21 Q. Is that normal procedure?

22 A. Normally after we get in the car you let  
23 them know.

24 Q. But you don't call from the spot, from the  
25 scene, that you made an arrest?

1           A. Not always, no, sir. I mean there's been  
2 times that we have, you know. You may have to wait on a  
3 wrecker or --

4           Q. Did you have to wait on a wrecker?

5           A. No, sir.

6           Q. So you just waited until you got back in  
7 your car to make the call?

8           A. Well, according to the log sheet, the way I  
9 -- when I called it in, I said 10-84 to the county jail,  
10 and that was at 2:06.

11          Q. What time did you arrive at the county jail?

12          A. 2:21.

13          Q. Is that documented in the record?

14          A. Yes, sir.

15          Q. And did you make any stops along the way?

16          A. No, sir.

17          Q. And what kind of condition was Mr. Burch in  
18 when you put him in your patrol car?

19          A. As far as intoxicated wise?

20          Q. Physical condition. You've already  
21 testified that he appeared to have been intoxicated.  
22 You've already testified that he had a bandage on his  
23 wrist. Was that on his wrist or hand?

24          A. Best I remember it come up to right along in  
25 here somewhere (indicating). I don't really recall. I



1 mean, I don't know for sure.

2 Q. Other than those two facts --

3 A. I don't know as far as physical condition  
4 other than him being intoxicated, he would appear to be  
5 about, I would think, about the same as he would be now  
6 except for he had a brace on his right hand.

7 Q. The brace was on the right hand. And you  
8 testified that you didn't make any stops?

9 A. No, sir, that is correct.

10 Q. Did you make any sudden stops?

11 A. No, sir.

12 Q. Did you make any jerking stops?

13 A. No, sir.

14 Q. Did you make any intentional sudden stops of  
15 the vehicle so that Mr. Burch would hit his head against  
16 the glass petition?

17 A. No, sir.

18 Q. You didn't do any of that?

19 A. No, sir.

20 Q. Had you ever done that before in the past?

21 A. No, sir.

22 Q. To any person you had in your car?

23 A. No, sir.

24 Q. Did you stop and get out of the car at any  
25 time?

1 A. Only at the county jail.

2 Q. But nowhere in between?

3 A. No, sir. It took me about 15 minutes, if I  
4 ain't mistaken, to get from his house to the county  
5 jail.

6 Q. And tell me what kind of condition Mr. Burch  
7 was in after he got out of your car to go into the  
8 county jail?

9 A. Best of my knowledge he was in the condition  
10 he was when he got in the car.

11 Q. Did he have any bruises on him?

12 A. I didn't see no bruises on him. I didn't  
13 look for them, though.

14 Q. Who was at the jail when you arrived?

15 A. Charlie Skalnik.

16 Q. Can you spell that?

17 A. No. I want to say -- I'm not sure. It's  
18 S-c, but I don't know how -- S-c-a-l-n-i-k, but I'm not  
19 for sure about that spelling.

20 Q. Skalnik?

21 A. Yes, sir.

22 Q. And someone else?

23 A. Chris Kendrick. They come out and met me in  
24 the sally port.

25 Q. Met you where?

1 A. In the sally port.

2 Q. Now, what is their position?

3 A. Kendrick is a sergeant in the jail.

4 Q. Okay.

5 A. And Charlie is a jailer.

6 Q. Did he still have his handcuffs on?

7 A. At that time, yes, sir.

8 Q. Was he verbal, was he saying anything?

9 A. He didn't want to get out of the car. He  
10 was still mad at me at that time.

11 Q. Well, what did he say specifically that you  
12 recall?

13 A. I don't recall what he said. On the way to  
14 the jail he was threatening me with his family and his  
15 son. He accused me of being on drugs and being arrested  
16 for drugs. He told me he was going to kill me. He told  
17 me that his brother was a deputy sheriff up here and he  
18 would cost me my job, that I would be in the newspaper  
19 and on TV, that I would regret coming to his house. It  
20 was just numerous threats that he made on the way.

21 Q. And all this was going on during the trip?

22 A. Yes, sir. He was beating his head on the  
23 cage in the car.

24 Q. Oh, he was beating his head?

25 A. Yes, sir.

1 THE COURT: Mr. Burch, you just need to  
2 sit down and wait. You will have your turn.

3 Q. Was he bleeding anywhere after he got out  
4 of the car?

5 A. I don't recall.

6 Q. Did he require any medical treatment?

7 A. I don't know. I take him into the jail, and  
8 if I don't have my arrest report done, they take  
9 possession of him.

10 Q. When did you do your arrest report?

11 A. In the jail.

12 Q. Immediately thereafter?

13 A. Yes, sir. I was in the jail for -- I got at  
14 the jail at 2:21:42 and I left the jail. I was back in  
15 my car on the road at 3:05. So I was in the jail for  
16 about 39 minutes.

17 Q. That's where you made your arrest report?

18 A. Yes. If I have to wait on a wrecker, I try  
19 to do it on the road, but in cases of this nature I make  
20 it in the jail.

21 Q. So you left Mr. Burch in the possession of  
22 Charlie Skalnik and Chris Kendrick?

23 A. Yes, sir.

24 Q. Are either one of those gentlemen here  
25 tonight?

1           A. Yes, sir. And there's a Ms. Chapman. I  
2 don't know her first name. She's also here.

3           Q. What was her position?

4           A. She's a jailer.

5           Q. She's a jailer?

6           A. Yes, sir.

7           Q. And are these people here on your behalf?

8           A. They're subpoenaed, yes.

9           Q. Who subpoenaed them?

10          A. Civil Service Board.

11          Q. Now, after you left the jail at 3:05, did  
12 you have any other contact with the jail regarding Mr.  
13 Burch?

14          A. Did I go back in the jail?

15          Q. Did you have any other contact either  
16 physically going back to the jail or telephonically,  
17 radio, any type of contact whatsoever?

18          A. None that I would know of. I left the  
19 jail -- like I said, I was back on the road at 3:05, so  
20 I wouldn't have went back to the jail unless I made  
21 another arrest.

22          Q. Okay. Do you recall making any calls back  
23 to the jail?

24          A. No, sir.

25          Q. So do you have any knowledge of anything

1 that transpired after you deposited Mr. Burch at the  
2 jail?

3 A. He was uncooperative with the folks in the  
4 jail. I was doing my arrest report and --

5 Q. Before we go into that, you're talking about  
6 the window of time between 2:21 and 3:05, you said you  
7 were doing your arrest report.

8 A. Yes, sir. That would have been the time,  
9 yes, sir. While I was in the jail doing my arrest  
10 report, you could hear them ask him questions, and he  
11 wouldn't -- I think one of the questions was what's your  
12 Social Security number, and I think he told them one.  
13 He wouldn't give information to them. When they did  
14 have him in a cell, before I left you could hear a  
15 thump, which he was hitting the door and the door --

16 Q. Now, did you actually see this going on or  
17 is this speculation?

18 A. No. It was in the cell where he was at that  
19 they -- there wasn't no one else in there. I did see  
20 him hit his head on the wall in the jail. He was  
21 hitting his head on the wall. But that would have been  
22 the end of my contact with him once the jail takes  
23 possession of him.

24 Q. Was this unusual conduct on his part?

25 A. From the last time I put him in jail, yes,

1 sir.

2 Q. And from the previous three times that you  
3 put him in jail, he's never conducted himself like this  
4 in the past?

5 A. None I recall of any time -- he's been put  
6 in jail he's either had some type of medical necessity,  
7 and I think one time he said he had a heart attack in  
8 jail at Carbon Hill, but I -- he never -- not acted like  
9 this, no, sir.

10 Q. Do you know whether or not -- did you check  
11 to see if he had injured himself?

12 A. No, sir.

13 Q. Did you do anything to restrain him so he  
14 wouldn't injure himself?

15 A. In the car?

16 Q. In the jail.

17 A. I don't do that. I don't handle them in the  
18 jail. When I put him in the back seat of the car, I  
19 seat belted him in but that's as far as I -- of course,  
20 he didn't have it on when he got to the jail.

21 Q. So his hands were handcuffed behind him?

22 A. No, sir, his hands were up front.

23 Q. And you did put his seat belt on?

24 A. Yes, sir, when we left his residence.

25 Q. And it wasn't on when you arrived?

1 A. No, sir.

2 Q. Do you know whether or not he required any  
3 medical treatment that night?

4 A. I don't know of any.

5 Q. When you were -- when you arrested him on  
6 the three previous occasions, has there -- in each of  
7 those occasions has there ever been an incident where he  
8 was injured during the arrest?

9 A. When I arrested him?

10 Q. Yes, sir.

11 A. None that I know of, no.

12 Q. Is this the first claim he's ever filed  
13 against --

14 A. Against me?

15 Q. Against you?

16 A. As far as I know. I don't recall any more.

17 Q. Is this the first dispute that you've ever  
18 had with him?

19 A. As far as argument wise?

20 Q. Any type of dispute whatsoever. Any type of  
21 conflict or issues between you and this gentleman.

22 A. When I was chief of police he complained  
23 about my in-laws having chickens and ducks and said they  
24 kept him up during the night and wanted me to do  
25 something with it. There wasn't an ordinance to do



1 anything with. That would be the only thing I can think  
2 of.

3 Q. This was while you were chief at Carbon  
4 Hill?

5 A. Yes, sir. It should have been during that  
6 time.

7 Q. I take it their property, your in-laws'  
8 property, was located adjacent to his?

9 A. They was adjoining to Mr. Barron's, yes.

10 Q. How close were these stock animals to his  
11 home?

12 A. I don't know where the property line would  
13 have been, but I -- I really don't know what the -- it  
14 wasn't like a mile away but it wasn't like right up next  
15 to his house. I don't really know how to --

16 Q. Was it within the city limits of Carbon  
17 Hill?

18 A. Yes.

19 Q. Did he ever attempt to file reports or  
20 complaints?

21 A. About the chickens and stuff?

22 Q. About --

23 A. He never --

24 Q. With your in-laws?

25 A. He never -- I don't think he ever tried to

1 get me to do a report. I don't know if --

2 Q. Did he ever ask you to do a report?

3 A. No, sir. If he had of, I would have done  
4 it.

5 Q. So as far as you know there's no written  
6 complaint or an incident report that you're aware of?

7 A. I don't know about that. There may be, and  
8 I'm sure there are because I think they had him arrested  
9 while I was either gone or off.

10 Q. Who are your in-laws over there?

11 A. Sam and Sandra Nelson.

12 Q. Sam and Sandra Nelson?

13 A. Yes.

14 Q. And did they own a house?

15 A. Yes, sir, a house.

16 Q. A house and lot or did they have acreage to  
17 go with that?

18 A. No. It's a couple of -- I don't know how  
19 many lots they've got, but it's in lots. It's not  
20 acreage.

21 Q. Did they have livestock as part of that --

22 A. They had -- at one time they had a horse up  
23 there, some horses, and they had some chickens and ducks  
24 and turkey, and I don't know what all they had up there.

25 Q. What about Mr. Burch at that time prior to

1 where you made the arrest the other night, where did  
2 he -- did he have a house and lot or did he have  
3 acreage?

4 A. There's a trailer. The driveway is  
5 probably -- it's probably -- I really don't know how far  
6 off the road he lives. It's probably within two-tenths  
7 of a mile, I guess. I'm just guessing. I don't know  
8 for sure.

9 Q. Was this more of a complaint about noise, is  
10 that what he was complaining about, or was it a nuisance  
11 complaint?

12 A. At his house?

13 Q. Yes.

14 A. Where he lives at now?

15 Q. In Carbon Hill with your in-laws.

16 A. He was complaining about the chickens. I  
17 asked the mayor at that time and the magistrate did they  
18 have an ordinance. They didn't know of no ordinance.

19 Q. So you -- the mayor and the magistrate and  
20 you, none of y'all knew of any type of ordinance, a  
21 nuisance ordinance or a noise ordinance or anything like  
22 that?

23 A. Not a nuisance as far as livestock, no,  
24 sir. They had a nuisance ordinance like a noise, like a  
25 car radio or something like that, but without reading it

1 I couldn't tell you what was in it. I don't remember  
2 one about the livestock. They didn't know of one about  
3 livestock. If we ever got a thing like that, we would  
4 ask the city clerk and the magistrate. You know, she  
5 would be the one that would find it and give it to us  
6 and tell us what it was.

7 Q. What about the presence of the livestock  
8 within the city limits?

9 A. I don't know that there is an ordinance  
10 against it.

11 Q. Nothing within your knowledge as chief of  
12 police?

13 A. No, sir.

14 Q. Is that the only conflict that you can  
15 recall between Mr. Burch and yourself or your in-laws?

16 A. Actually, me and him didn't have a conflict  
17 over it. I mean, that was more of a conflict with my  
18 in-laws. I can no more control my in-laws than you  
19 would yours, you know, and I think they -- like I said,  
20 I think they had him arrested.

21 Q. Do you know what the charge was?

22 A. There was two more on here, and I don't  
23 know -- would have been during the time I was off. One  
24 of them was June of '02, and it was for harassment  
25 communications. There was also one for July 10. That

1 was disorderly conduct.

2 Q. '02?

3 A. Yes, sir.

4 Q. And didn't you say this was made -- these  
5 were made during the time that you were off?

6 A. Yes, sir.

7 Q. When you were off sick?

8 A. Yes, sir.

9 Q. How long were you off sick?

10 A. About three months.

11 Q. Where were you at the time?

12 MR. WILLFORD: Let me renew my relevancy  
13 objection.

14 THE COURT: Yeah, the hour is going to be  
15 late before we get through. If you can keep it a  
16 little bit more germane to what we're doing, it  
17 sure would be helpful.

18 Q. While you were at the -- I'm going back to  
19 the evening of the 16th. While you were at the Walker  
20 County jail with Mr. Burch, was there any physical  
21 contact between you and he?

22 A. In the jail, no, sir.

23 Q. Any type of confrontation, any type of  
24 fighting?

25 A. The only physical thing that would have been

1 between me and Tommy would have been when I arrested  
2 him. As far as physical mistreatment or anything like  
3 that, there was none. After I give him to the jail  
4 personnel, they take possession of them then. I don't  
5 have to deal with them.

6 Q. So you didn't take him and wrestle him to  
7 the concrete floor and throw water on him or anything  
8 like that?

9 A. No, sir, I did not.

10 Q. He didn't give you any reason to?

11 A. I wouldn't have done that. Even if he had  
12 of, I wouldn't have thrown water on him. But, no, I did  
13 not have no -- after he was given to the jail, they  
14 handled him.

15 MR. PIAZZA: I think that's all the  
16 testimony I have.

17 THE COURT: Cross.

18 MR. WILLFORD: I would just like to cover  
19 one area just briefly that I'm not sure it got on  
20 the record and I want to make sure that the Board  
21 observed the motions that you made.

22 CROSS-EXAMINATION

23 BY MR. WILLFORD:

24 Q. When or immediately prior to the time that  
25 you applied the spray to Mr. Burch, I think you

1 testified that he had said that he was going to whop  
2 your a-s-s a couple of times, and then I saw you make a  
3 motion like this (indicating). Did Mr. Burch touch you  
4 prior to you applying the spray?

5 A. Yes, sir. He touched my chest. That's when  
6 he told me that he was going to -- he had done told me  
7 he was going whop my a-s-s and he told me that I was  
8 unwanted in his house.

9 Q. How close was he to you?

10 A. At that time?

11 Q. Yes, sir.

12 A. We was close. He walked up to me and I  
13 asked him to step back and he wouldn't step back. When  
14 I grabbed him by the arm, he jerked away. He had his  
15 arm drawn back and I sprayed him. Spraying him was for  
16 my safety and his to keep me from getting hurt or keep  
17 him from getting hurt, and that's why he was sprayed.

18 MR. WILLFORD: No more questions.

19 MR. PIAZZA: Well, let me ask you this.

20 REDIRECT EXAMINATION

21 BY MR. PIAZZA:

22 Q. After you sprayed him, you say he was pretty  
23 blinded by the whole incident. Did you still feel he  
24 was a threat -- was he fighting you at the time?

25 A. When I grabbed him back by the arm, he was

1 still trying to pull away from me after I sprayed him.

2 Q. So you sprayed him and you grabbed him by  
3 the arm?

4 A. No, sir. When I grabbed him by the arm the  
5 first time and told him he was under arrest, he jerked  
6 away from me.

7 Q. Which arm did you grab?

8 A. This arm (indicating), his elbow.

9 Q. The left arm?

10 A. Yes, sir. Right in here (indicating).

11 Q. That's his good arm as far as you know?

12 A. As far as I know.

13 Q. Your own testimony?

14 A. As far as I know.

15 Q. Proceed.

16 A. So when he pulled away from me and he had  
17 his hand back and I sprayed him and then I reached and  
18 grabbed him by his arm again and he was still trying to  
19 pull from me and I pulled him.

20 Q. Did he land on the floor?

21 A. He never did go completely to the floor.  
22 His feet was on the ground, his hands was out in front  
23 of him and then his butt was in the air.

24 Q. Okay. So he was -- he had all fours on the  
25 floor?



1           A. Yes, sir. He was on the ground and his  
2 behind was up in the air, yes, sir.

3           Q. Plus he couldn't see?

4           A. I wouldn't think so at that time.

5           Q. At that point, when he was in that position  
6 on the floor, you felt that he was a threat to you such  
7 that you needed to arrest him at that point?

8           A. I had done told him he was under arrest  
9 before all that happened.

10          Q. You told him he was under arrest before  
11 you --

12          A. That's when he first pulled away from me. I  
13 told him he was under arrest. That's what led to him  
14 being sprayed, and then when I reached and grabbed him  
15 by the arm again and pulled him, he was on all fours.  
16 And I went to handcuff him, and that's when Ms. Barron  
17 told me to please be careful he had hurt his hand. So I  
18 told him, I said, "Tommy, stand up," and I put the  
19 handcuffs in front of him and that's what I did.

20          Q. Now, prior to your telling him he was under  
21 arrest, had he touched you at all?

22          A. Before that?

23          Q. Before you told him he was under arrest.

24          A. That's when he told me he was going to --  
25 yes, sir. That's when he told me he was going to whop

1 my --

2 Q. Let me ask you again. Prior to your telling  
3 him he was under arrest, had he touched you?

4 A. When he told me like that, he told me he was  
5 going to whop my a-s-s --

6 MR. WILLFORD: For the record, the witness  
7 is tapping his chest again.

8 A. He told me that's what he was going to do,  
9 and I told him he was under arrest for disorderly  
10 conduct.

11 MR. PIAZZA: I don't think I have any other  
12 questions.

13 THE WITNESS: Did you want me to tell you  
14 some of these --

15 THE COURT: No. He doesn't want you to  
16 tell him anything else.

17 MR. PIAZZA: I would like to count the  
18 number of pages that we've got here.

19 THE COURT: We're going to take a break in  
20 a minute and we can copy those while we --

21 MR. PIAZZA: Can we do this: Why don't we  
22 have him, since he can identify each one, can we  
23 have him put that in the record?

24 THE COURT: Sure.

25 MR. WILEY: Is that necessary? We've got

1 an official court reporter here that's licensed by  
2 the State of Alabama. She's given documents all  
3 the time.

4 THE COURT: Well, he wants to identify  
5 them, though. I mean that would be the proper  
6 thing to do would be to identify them.

7 MR. PIAZZA: You want me to go ahead?

8 THE COURT: Yes.

9 FURTHER EXAMINATION

10 BY MR. PIAZZA:

11 Q. Just briefly identify each record that you  
12 have there.

13 A. These are where he's called in a prowler.  
14 This is one where some female was screaming.

15 Q. Do you have a date on these?

16 A. Yes, sir.

17 Q. Read the date into the record.

18 A. Yes, sir. It would be at the top. January  
19 17 of 2003, prowler report, prowler complaint.

20 Q. Does that have any other identifying number  
21 on it?

22 A. When he got there, Mr. Barron had a gun, and  
23 I told him to put it up. March 23 of 2003, female was  
24 supposedly in his yard yelling at him. He said she had  
25 a 10-79 or a 10-56, which is either dope or drunk.

1           January 25 of 2003, he called wanting an  
2 ambulance. RPS requested deputy to go out there because  
3 he mentioned he had guns.

4           August 25 of 2003, he reported a stolen  
5 gun. October 7 of 2003, he called 911 and told them he  
6 had an Uzi and he was going to start killing people with  
7 it. October 14, 2003, there was a domestic disturbance  
8 at his house. February 16, 2004, another domestic call  
9 at his house. This is the activity sheet where I went  
10 to his residence.

11           Q. What night was this? Was that February 16,  
12 2004?

13           A. Yes, February 16.

14           Q. Let me look at this one before you go any  
15 further. There are two, and I'm going to ask you to  
16 interpret this, okay. There are two -- there are two  
17 items here that are -- the times of which are 1:44 a.m.  
18 and 1:51 a.m. Do those reflect calls that you made into  
19 your dispatcher?

20           A. When you go 10-84, that's when they give you  
21 a call and you tell them you're in route, 10-84, and  
22 that's when they -- and 10-23 is when I arrive, and  
23 10-15C is when I was leaving his yard.

24           Q. Okay. All right.

25           A. That's also indicating on here that Mr.

1 Barron was beating his head on the cage.

2 Q. That was at 02:16 a.m., is that correct?  
3 That's 10 minutes after you left his home.

4 A. Yes.

5 Q. You called and reported --

6 A. 2:16, yes, sir.

7 Q. 2:16, ten minutes after you left his home?

8 A. I keyed the radio up where the dispatcher  
9 could hear him.

10 Q. You called and reported that he was beating  
11 his head on --

12 A. I called in and -- yeah, keyed the radio  
13 where the dispatcher could hear what was going on in the  
14 car.

15 This is general information here  
16 (indicating). His booking sheet. This is just a copy  
17 of where he was arrested back in '98. The other one in  
18 '98. This is one -- I don't know which one this one  
19 was. I believe this is one where a trooper got him for  
20 DUI in April of last year. This is booking  
21 information. That's a list of calls to the residence  
22 where he lives at. My subpoena. And a copy where  
23 his -- I guess where his court case was adjudicated up  
24 here.

25 Q. What's the date on that one?

1 A. On the adjudication?

2 Q. Yes. And which case was it?

3 A. May 1, 1995. It was carrying a concealed  
4 weapon. Looks like Officer Batemon. I don't know if  
5 that's -- and then a public intoxication of -- the same  
6 date by Officer Batemon, and then I have a copy of his  
7 booking sheet from Carbon Hill.

8 Q. You're going through a lot of pages.

9 A. That's his booking sheet and records. This  
10 right here is his booking -- where he was booked in  
11 Carbon Hill, the front and back his booking card. His  
12 arrest report. My letter from the Civil Service, and  
13 a driver's history on him.

14 Q. Okay. I'm just getting back to the scene  
15 inside Mr. Burch's home. Once Mr. Burch was on the  
16 floor on all fours, did you feel at that point in time  
17 that you had pretty much alleviated any threat that Mr.  
18 Burch would cause you?

19 A. Well, that's when I put him in handcuffs.

20 Q. I didn't ask you that.

21 A. I didn't --

22 Q. What I asked you was did you feel like in  
23 your own mind you had alleviated any threat that Mr.  
24 Burch would have caused you or threatened, any threat to  
25 your person?

1           A. Yes, sir, I would say so. I put his hands  
2 in front of him because of his benefit to where she said  
3 he had hurt his hand or arm or hand. And on the way to  
4 the jail, I wished I had put his hands behind him  
5 because a couple of times he hit the cage really hard.

6           Q. But did you feel like at that point in time  
7 when he was on the floor you had alleviated any threat  
8 to your person?

9           A. Yes, sir.

10          Q. Could you have made the decision at that  
11 time not to take him in?

12          A. No, sir, because I had done arrested him. I  
13 done told him he was under arrest.

14          Q. Did you read him his rights?

15          A. No, sir.

16          Q. Did you allow him to make a phone call?

17          A. I don't -- once they're in the jail, I don't  
18 handle that.

19          Q. Did you feel it necessary to take him to  
20 jail after you told him he was under arrest?

21          A. Yes, sir.

22          Q. Even though you had not called in the  
23 arrest yet to the dispatcher, could you have said --

24          A. I had done told him he was under arrest. I  
25 don't know. I don't think you can unarrest him.

1 Q. In your own mind you still -- you were  
2 obligated to take him in?

3 A. From my knowledge, yes.

4 Q. After the threat was removed?

5 A. From my knowledge, yes.

6 Q. From your person?

7 A. Yes.

8 Q. And was there any other threats made to you  
9 after he left other than what you testified to in the  
10 patrol car?

11 A. Uh --

12 Q. Any threats other than while he was behind  
13 the glass petition in the patrol car?

14 A. Yes, sir.

15 Q. Any other threats?

16 A. No, he told me that during their trip down  
17 there he did tell me he would give us hell, that he was  
18 -- and I told him, I said, "Tommy, that's crazy." Well,  
19 he hit the cage again and accused me of calling him  
20 crazy. I said, "Tommy, I ain't calling you crazy. I'm  
21 saying your comment is crazy."

22 Q. Do you know if he had any medication with  
23 him --

24 A. No, sir, I don't.

25 Q. -- before you he left his home?



1           A. No, sir, I don't. Unless he had it in his  
2 pants pocket, I wouldn't.

3           Q. Did you think to ask Ms. Barron if he needed  
4 his medication?

5           A. No, I didn't.

6           Q. Did you think to ask her if he was on his  
7 medication?

8           A. No, sir, I didn't.

9           Q. Or if he had been taking his medication?

10          A. No, sir. All she told me was that he had  
11 been drinking all day and he was drunk and that's -- no,  
12 sir, I didn't ask her that, no, sir.

13          Q. And from what it appeared to you, he had a  
14 bandage or a brace on his left arm or his left wrist?

15          A. No, sir.

16          Q. His injured wrist, on his right one?

17          A. He had a -- I thought it was some type of  
18 brace. It appeared to have some type of ace bandage  
19 wrapped around it or something.

20               MR. PIAZZA: That's all I have.

21               THE COURT: For clarification there's been  
22 a lady been referred to by different names; is that one  
23 and the same person? The lady that was at the scene.

24               MR. PIAZZA: Ms. Barron, yes, sir.

25               THE WITNESS: I've always known her as Ms.

1 Wilkerson.

2 THE COURT: All right. So Ms. Wilkerson --

3 MR. WILLFORD: And I think you referred to  
4 her as Pat at one point.

5 THE WITNESS: Yes, her name is Pat  
6 Wilkerson.

7 THE COURT: And Pat and then Ms. Barron.  
8 That's all the same person?

9 MR. PIAZZA: Yes. As far as I know, until  
10 I'm told differently.

11 THE COURT: All right. That's the way I  
12 kind of interpreted it. I wanted to be sure because we  
13 had those three names.

14 Anything else for this witness?

15 MR. WILLFORD: No, sir.

16 MR. STEPHENS: We've been going an hour and  
17 a half. Does the Board want to take a stretch break or  
18 do you want to continue on?

19 (Short recess.)

20 THE COURT: We're back on the record after a  
21 short recess. It appears to the Board and to counsel  
22 that we're not going to be able to conclude tonight, and  
23 since we can't conclude tonight, it might be best to  
24 look at a time when we can come back. We discussed this  
25 shortly with the Board. Next week is not going to be --

1 any day next week is not going to be available. The  
2 26th, which is Monday week, two weeks from today, is not  
3 going to be a good day. The 27th or the 28th of July  
4 will be good days. The 3rd and the 4th of August are  
5 going to be good days. We talked about starting like at  
6 4:30 in the afternoon and concluding at some reasonable  
7 hour. Do your calendars look like those dates would be  
8 okay?

9 MR. WILLFORD: The 27th, the 28th, the 3rd,  
10 and the 4th are all good for me.

11 THE COURT: Hank, how about you as far as  
12 you can tell?

13 MR. WILEY: I'm looking. The 27th, believe  
14 it or not, I'm going to be in Montgomery in  
15 depositions. Maybe I can get Gary to take my deposition  
16 in Montgomery and he can stay down there. The 28th will  
17 be okay. The 3rd and 4th will be okay.

18 THE COURT: Mr. Piazza, what about you?

19 MR. PIAZZA: As far as the 27th and the  
20 28th, which is a Tuesday and Wednesday, I may be called  
21 back to military duty. I've been doing a lot for the  
22 last two months so they've been -- usually they'll call  
23 me and I'll go in for three days a week, but I do my  
24 duty in Birmingham but it's usually in the middle of the  
25 week, so the 27th and the 28th is questionable right

1 now.

2 THE COURT: What about the 3rd and 4th? The  
3 same thing with that?

4 MR. PIAZZA: The 3rd and 4th would be the  
5 same thing with that. It's just too far in advance to  
6 know.

7 THE COURT: When will you know about the  
8 27th and the 28th?

9 MR. PIAZZA: Usually the week before. I  
10 should know by the end of this week. If not I could do  
11 one of the days -- the end of next week.

12 THE COURT: Okay. Hank, you're going to be  
13 -- the 27th you're going to be in Montgomery?

14 MR. WILEY: The 27th I've got some court --  
15 I've got a court-ordered deposition.

16 THE COURT: Why don't we look at the 28th,  
17 the 3rd and the 4th. And, Mr. Piazza, we'll just go  
18 ahead and schedule it one of those days. I wouldn't  
19 mind going ahead and just settling on the 28th, which is  
20 a Wednesday. Not good Wednesday? What about the 3rd or  
21 4th? Let's look at the 3rd. Is that convenient with  
22 the Board? That's Tuesday, August 3. If that's good  
23 with everybody, we'll just go ahead and schedule that  
24 date. We're going to start about 4:30 in the afternoon.  
25 That's the earliest that Rhonda would be available, our

1 court reporter, and that's the earliest we would know  
2 for sure that we would have this courtroom.

3 One thing, I wish I had thought of it but I  
4 didn't, Mr. Wiley -- Mr. Wiley suggested -- we've got a  
5 lawyer out here that has been subpoenaed. It would be  
6 good if we could go ahead and get his testimony. It  
7 should be brief. Do you think he will be a short  
8 witness, Judge Thomas?

9 MR. PIAZZA: It's our witness.

10 MR. WILEY: He's the judge from -- he's the  
11 municipal judge of the City of Carbon Hill.

12 THE COURT: It sure would be a good  
13 accommodation to him if we could get him --

14 MR. WILEY: I can't imagine what he would  
15 have to say.

16 MR. PIAZZA: Yes, sir, that's fine with me.  
17 That's perfectly fine. Let's go ahead and hear his  
18 testimony.

19 THE COURT: He should be a short witness,  
20 and as an accommodation to him, I think it would be good  
21 to do that.

22 (Mr. Steven Thomas is brought into the  
23 Courtroom.)

24 THE COURT: Mr. Thomas, I want the record to  
25 show and I want you to understand we're all tired and

1 we're fixing to go home and thought we'd go ahead as an  
2 accommodation to you let you go ahead since you've  
3 already burned some time here tonight, get your  
4 testimony out of the way and that will excuse you from  
5 having to come back. So with that having been said, Mr.  
6 Piazza, he's your witness.

7 STEVEN ALLEN THOMAS

8 having previously been duly sworn, was examined  
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PIAZZA:

12 Q. Judge, would you please state your full name  
13 for the Board?

14 A. Steven, S-t-e-v-e-n, Allen, A-l-l-e-n,  
15 Thomas, T-h-o-m-a-s.

16 BOARD MEMBER STUDDARD: Should we tell these  
17 other folks that if they want to go home instead of  
18 just --

19 THE COURT: That's a good idea. John Mark,  
20 if you'll just tell them that they can be excused  
21 and we'll let them know about the -- right now  
22 we're looking at August the 3rd at 4:30. Go ahead.

23 Q. Judge, where do you preside?

24 A. Well, I preside at the municipal court of  
25 Carbon Hill, Alabama, also Oakman, Alabama, and Arley,

1 Alabama.

2 Q. Arley?

3 A. Arley, A-r-l-e-y.

4 Q. Oh, Arley. And how long have you been a  
5 municipal court judge?

6 A. Over 20 years in Carbon Hill.

7 Q. And do you know Mr. -- I'm going to refer  
8 to him as Tommy Barron and you may know him as Taz Burch  
9 or you may know him as some other name. Do you know  
10 this gentleman sitting to my left?

11 A. Yes. I know him as Tommy Barron.

12 Q. Tommy Barron. And how did you come to know  
13 Mr. Barron?

14 A. Well, he has appeared as a defendant in the  
15 municipal court of Carbon Hill.

16 Q. Do you recall how many occasions he has  
17 appeared before the municipal court there in Carbon  
18 Hill?

19 A. Not definitely but I would say two or three  
20 times.

21 Q. And do you recall how long ago that was?

22 A. I think the last time was probably within  
23 the last 12 months.

24 Q. Within the last 12 months. And do you  
25 recall the disposition of the -- I know that you hear a

1 lot of cases, but would there be something that would  
2 stand out in your mind as to this particular individual,  
3 this particular gentleman or his cases?

4 A. Well, one case he was having a problem with  
5 neighbors. I think some of their names were Nelson, and  
6 there was some accusations that had been made, and I  
7 think the Nelsons were, or some of the Nelson family,  
8 was the prosecuting witness on the case.

9 Q. Do you know what the charges were? Was it  
10 some type of harassment charge?

11 A. I think it was. I think it involved  
12 allegations of shooting a gun toward their property. I  
13 don't remember the exact charges.

14 Q. Do you recall how that case was disposed of?

15 A. I think there was some type of agreement,  
16 and I'm not clear on this, but Mr. Barron had planned on  
17 moving away and that part of the disposition was going  
18 to be based on the fact that he would move away and  
19 would no longer be a neighbor of the Nelsons.

20 Q. And as a result of that agreement, was the  
21 the case against him dismissed or non pros.

22 A. I think that's what was supposed to have  
23 happened and probably did happen.

24 Q. Were there any other cases -- you mentioned  
25 two or three cases. Were these all three cases -- and



1 just for expediency, were these all three cases  
2 involving the Nelson's complaints against Mr. Burch?

3 A. May have but I don't really recall.

4 Q. Okay. Do you have any recollection of the  
5 other two cases that would have been before you?

6 A. I do not.

7 Q. Excuse me one minute.

8 MR. PIAZZA: That's all the questions I  
9 have, sir.

10 MR. WILLFORD: Judge, just very briefly.

11 CROSS-EXAMINATION

12 BY MR. WILLFORD:

13 Q. Would it be fair to say that the cases that  
14 you have presided over that involved Mr. Burch that the  
15 court records would accurately reflect what happened in  
16 those cases?

17 A. I'm certain they would.

18 Q. So if we were to get those and submit those  
19 to the Court, that that would be a true and accurate  
20 reflection of what happened in those cases?

21 A. I believe they should.

22 MR. WILLFORD: That's all the questions I  
23 have.

24 THE COURT: Folks, we'll adjourn and  
25 reconvene on the 3rd of August unless there's some

1 conflict with Mr. Piazza's schedule.

2 C E R T I F I C A T E

3 STATE OF ALABAMA )

4 WALKER COUNTY )

5 I hereby certify that the above and foregoing  
6 proceeding was taken down by me by stenographic means,  
7 and that the questions and answers therein were produced  
8 in transcript form by computer aid, and that the  
9 foregoing represents a true and correct transcript of  
10 the proceedings occurring on said date.

11 I further certify that I am not of counsel, nor  
12 related to any of the parties to this action; nor am I  
13 in anywise interested in the result of said cause.

14   
15

16 RHONDA G. WOODS

17  
18 Notary Public, State of Alabama at Large

19 My commission expires December 21, 2008.  
20  
21  
22  
23  
24  
25